

FIDELITY AND DEPOSIT COMPANY

HOME OFFICE BALTIMORE, MD 21203

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Bond Number CFB 8920499

CYNTHIA S. GILLETTE, individually and derivatively on
behalf of nominal defendant
BLIMPIE OF CALIFORNIA, INC.,

Plaintiff,

v.

JEFFREY ENDERVELT, BELLE ENDERVELT and DORA RICCI,
Defendants,

and

BLIMPIE OF CALIFORNIA, INC.,

Nominal Defendant.

FILED
U.S. DISTRICT COURT
S.D. OF N.Y. N.Y.
MAR 11 - 11 PM 03

GUARDIAN AD LITEM BOND

07 Civ. 4697 (CLB)

KNOW ALL MEN BY THESE PRESENTS:

That we, **MARIANNE T. O'TOOLE, ESQ.**, of 20 Valley Road, Suite One, Katonah, NY 10536, as Principal and the **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, having an office and principal place of business for the State of New York at One Liberty Plaza, New York, New York 10006, as Surety, are held and firmly bound unto **BELLE ENDERVELT** in the sum of **EIGHTY THOUSAND AND 00/100THS--(\$80,000.00)** DOLLARS, lawful money of the United States, to be paid to the said **BELLE ENDERVELT**, her heirs, executors or administrators; for which payment, well and truly to be made, the said **Marianne T. O'Toole, Esq.** binds herself, her heirs, executors and administrators and the said Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 27th day of February, 2008.

WHEREAS, by an Order of the above-entitled Court, dated the 19th day of February, 2008, the above named **Marianne T. O'Toole, Esq.** was duly appointed Guardian Ad Litem for defendant **Belle Endervelt** in this litigation.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That, if the above bounden **Marianne T. O'Toole, Esq.** shall in all things faithfully discharge the trust reposed in her as Guardian Ad Litem for defendant, **Belle Endervelt**, in the above action, and obey all lawful directions of the said Court, touching the trust, and shall in all respects, render a just and true account of all moneys and other property received by her, and of the application thereof, and of said Guardianship whenever required to do so by a Court of competent jurisdiction, then this obligation to be void; otherwise to remain in full force and virtue.

By: 

Marianne T. O'Toole, Esq., Principal

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By: 

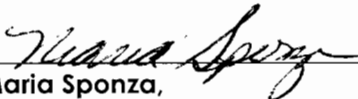
Maria Sponza, Attorney-In-Fact

STATE OF NEW YORK

COUNTY OF NEW YORK

I, **Maria Sponza**, Attorney-in-Fact of the **Fidelity and Deposit Company of Maryland**, have compared the foregoing Resolution with the original thereof as recorded in the Minute Book of said Company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original Resolution, and that the said Resolution is still in full force and effect.

Given under my hand and the seal of the
Company, at the City of New York, this 27th day of
February, 2008.



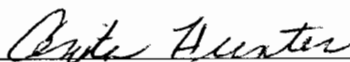
Maria Sponza, Attorney-in-Fact

STATE OF NEW YORK

COUNTY OF NEW YORK

On the 27th day of February, 2008, before me personally came **Maria Sponza**, resides at 60 East 42nd Street, New York, New York, State of New York, that she is Attorney-In-Fact of **Fidelity and Deposit Company of Maryland**, the corporation described in and which executed the within instrument; that she knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the Board of Directors of said corporation, and that she signed her name thereto by like order; and that the Fidelity and Deposit Company of Maryland is duly authorized to transact business in the State of New York in pursuance of the statutes in such case made and provided; that the Superintendent of Insurance of the State of New York, has, pursuant to Chapter 28 of the Consolidated Laws of the State of New York, known as the Insurance Law, issued to the Fidelity and Deposit Company of Maryland a Certificate of Solvency and of Qualification to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that such certificate has not been revoked.

ANITA HUNTER
Notary Public, State of New York
No. 40-4638371
City of Richmond County
Term Expires April 30, 2011



Notary Public

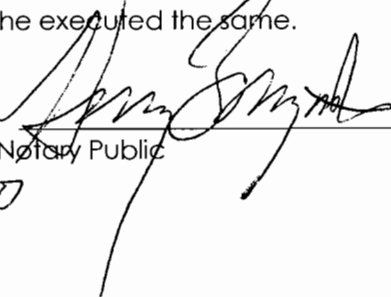
State of

County of

ss. Individual Acknowledgment

On this 28 day of February, 2008, before me personally came **MARIANNE T. O'TOOLE, ESQ.** to me known, and known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that she executed the same.

ANITA HUNTER
Notary Public, State of New York
No. 40-4638371
City of Richmond County
Term Expires April 30, 2011



Notary Public

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Sybil LEVINE, Maria SPONZA, Anita HUNTER, Margaret MCLAUGHLIN and Carol LEVINE, all of New York, New York, EACH** its true and lawful agent and Attorney-in-Fact to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Maria SPONZA, Anita HUNTER, Carol LEVINE, Sybil LEVINE, Margaret MCLAUGHLIN, dated August 5, 2004.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 26th day of August, A.D. 2004.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY



Eric D. Barnes

Eric D. Barnes

Assistant Secretary

By:

Theodore G. Martinez

Theodore G. Martinez

State of Maryland }
 City of Baltimore } ss:

On this 26th day of August, A.D. 2004, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and ERIC D. BARNES, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Dennis R. Hayden

Dennis R. Hayden

Notary Public

My Commission Expires: February 1, 2009

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

EXTRACT FROM BY-LAWS OF COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertaking, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, do hereby certify that the foregoing Power Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the respective By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990 and of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies,

this 27 day of FEBRUARY, 2008.

C. W. Rollins

Assistant Secretary



FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

3910 KESWICK ROAD, BALTIMORE, MD 21203

Statement of Financial Condition

As Of December 31, 2006

ASSETS

| | |
|---------------------------------------|-----------------------|
| Bonds | \$ 150,563,710 |
| Stocks | 39,367,826 |
| Cash and Short Term Investments | 38,939,878 |
| Reinsurance Recoverable | 8,609,769 |
| Other Accounts Receivable | 25,762,452 |
| TOTAL ADMITTED ASSETS | \$ 263,243,635 |

LIABILITIES, SURPLUS AND OTHER FUNDS

| | |
|---|-----------------------|
| Reserve for Taxes and Expenses | \$ 625,582 |
| Ceded Reinsurance Premiums Payable | 32,539,586 |
| Securities Lending Collateral Liability | 35,322,207 |
| TOTAL LIABILITIES | \$ 68,487,375 |
| Capital Stock, Paid Up | \$ 5,000,000 |
| Surplus | 189,756,260 |
| Surplus as regards Policyholders | 194,756,260 |
| TOTAL | \$ 263,243,635 |

Securities carried at \$33,209,464 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2006 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$261,193,375 and surplus as regards policyholders \$192,706,000.

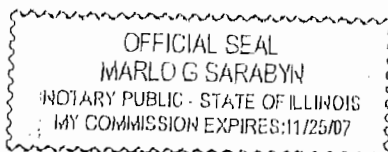
I, DAVID A. BOWERS, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2006.


Corporate Secretary

State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 20th day of March, 2007.

Notary Public



✓ Brient, J. 

March 3, 2008

Gaelle J. Cirau, Clerk.

✓ White Plains, NY
March 6, 2008

✓ SO ORDERED:

Charles L. Brient
Hon. Charles L. Brient, U.S.D.J.